



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Mercx

Application No.: 09/966,351

Filed: 9/28/2001

Title: Metallized Polyester Composition

Attorney Docket No.: GEPL.P-061

Group Art Unit: 1773

Examiner: K. Kreuer

Confirmation No: 3890

REPLY BRIEF FOR APPELLANT

This Reply Brief is filed in support of Applicants' Appeal from the final rejection mailed 3/7/2003, and in response to the Examiner's Answer mailed March 30, 2004. A Request for Oral Hearing is being filed herewith.

As noted in Applicants' Brief, the present invention relates to metallized molded resin article. One of the problems encountered with metallized molded resin articles is the formation of haze, and rainbow-like blotches on the surface of the article, particularly after exposure to heat. This phenomenon is referred to in the art as "blooming."

It is noted as a first matter that the rejection under 35 USC § 112, second paragraph and rejections under 35 USC § 103 based on JP 2000035509A (Polyplastics) are indicated as overcome. (Examiner's Answer, Page 7). This means that the remaining rejections are based on the Breitenfellner reference in combination with either Cohen or Weaver.

With respect to the combination of Breitenfellner and Cohen, the Examiner now agrees (Examiner's Answer, page 8) that Cohen does not teach an improvement in surface

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May 28, 2004  
Date of Signature

appearance, but only a good surface appearance. This improvement was originally offered as a reason that combining the references was appropriate, and therefore that reason is now lacking.

The Examiner further asserts (Examiner's Answer) Page 8, that arguments of unexpected properties, i.e., the lack of blooming, are not convincing and repeats the statement that "blooming is a property of the resin composition not the laminate" which appeared in the rejection mailed March 7, 2003. Applicants specifically challenged the factual basis for this statement in the paper filed June 14, 2003. Inasmuch as the Examiner did not address this statement in the Advisory Action, it was believed that this faulty argument had been withdrawn. Applicants therefore repeat here the argument made in the June 14, 2003 amendment and request that the Examiner be required to either withdraw the argument or find support for the factual assertions he is making that are contrary to the plain teaching of the present application.

As previously argued, the Examiner states that the unexpected fact that the articles as claimed do not suffer from the defect of blooming is of no moment, because "blooming" is a property of the resin composition, not the laminate (May 7, 2003 Office Action, Page 4). No support is offered for this statement, although such support either in the form of a reference or a declaration stating the Examiner's expertise is plainly required since the statement is contrary to the present application. For example, as pointed out in the specification on page 2, the "non-blooming release agent does not migrate through the **metallized layer** so that deleterious rainbow and haze effects are avoided." This is a benefit to the metallized article that arises from the non-blooming nature of the polymer release agent/lubricant. Furthermore, claim 1 states that the absence of blooming is a property which is observed when the **metallized molded article**, not just the rein layer is heated.

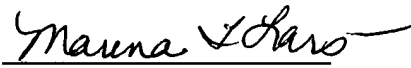
The Examiner also asserts that Applicants have not compared their invention to the closest prior art, which he characterizes as Cohen (Examiner's Answer, Page 9). The fact that no meaningful comparison can be made with the Cohen reference, however, points out how strained the Examiner's assemblage of references is. The present claims are drawn to a laminate. Cohen does not relate to a laminate. It is not entirely clear therefore what meaningful comparative testing could be done. A comparison of the claimed laminate to Cohen per se, would not be

meaningful because the coating magnifies the visual impact of any blooming. Similarly, since the Examiner says Cohen is within the scope of the resin definition, comparing just the lower layers would not be fruitful.

Finally, Applicants submit that the Examiner's argument that components present in Weaver are not excluded from the present claim misses the point. The question is whether combining two references, one that includes these additives such as carbon black, and one that does not, makes any sense in the context of those references. It is only by using this context that the kind of hindsight reconstruction in which the Examiner is indulging can be avoided.

Accordingly, Applicants once again urge that the application is in form for allowance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Marina T. Larson", with a stylized flourish at the end.

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